



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT 15 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Timothy Urling

Idaho Falls, ID 83404

Re: MUR 6752

Dear Mr. Urling:

This is in reference to the complaint you filed with the Federal Election Commission on August 23, 2013, concerning the use of a corporation's name and logo on an invitation to a fundraising event. After considering the circumstances of this matter, the Commission determined to dismiss this matter and closed the file on October 7, 2014. At the same time, the Commission reminded the Idaho Association of REALTORS® and Simpson for Congress and T. Layne Van Orden in his official capacity as treasurer of the requirements under 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) and 11 C.F.R. § 114.2. The Factual and Legal Analysis, which more fully explains the basis for the Commission's decision is enclosed.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. *See* 52 U.S.C. § 30109(a)(8) (formerly 2 U.S.C. § 437g(a)(8)).

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Lisa J. Stevenson
Deputy General Counsel - Law

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENTS:** Simpson for Congress and MUR: 6752
7 T. Layne Van Orden in his
8 official capacity as treasurer
9
10 Idaho Association of
11 REALTORS®, Inc.

12 **I. INTRODUCTION**

13 Complainant alleges that the Idaho Association of REALTORS® ("IAR") and Simpson
14 for Congress and T. Layne Van Orden in his official capacity as treasurer (the "Committee")
15 violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) and 11 C.F.R. § 114.2 when IAR
16 used its corporate name and logo on an invitation to an August 2013 fundraiser for
17 Representative Mike Simpson. IAR and the Committee each argue that IAR did not make a
18 corporate contribution to Simpson because IAR did not distribute the invitation beyond its
19 restricted class. Nevertheless, the Committee states that it distributed the invitation to "tens of
20 thousands of people, associations, and organizations" but asserts that such distribution was "all
21 within the boundaries of the law." Committee Resp. at 1.

22 Based on the available information, the Commission dismissed, as a matter of
23 prosecutorial discretion, the allegation that IAR made and facilitated the making of
24 impermissible corporate contributions to Representative Simpson, but reminds IAR and the
25 Committee of the requirements under 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) and
26 11 C.F.R. § 114.2.

1 **II. FACTS**

2 IAR is a non-profit corporation that functions as a professional trade organization for
3 Idaho realtors. <http://www.idahorealtors.com/About.aspx>. IAR has a state political action
4 committee that files disclosure reports with Idaho Secretary of State.

5 <http://www.sos.idaho.gov/elect/Finance/2014/2013Annual/PAC/RealtorsPAC.pdf>.

6 Congressman Mike Simpson represents Idaho's 2nd Congressional District and is a
7 candidate for re-election in 2014. The Committee is Simpson's authorized campaign committee
8 and T. Layne Van Orden is the Committee's treasurer.

9 On August 26, 2013, a luncheon fundraiser was held at the Boise Centre on the Grove to
10 support Simpson's re-election.¹ The Committee paid for and printed the invitation to the
11 fundraiser. Committee Resp. at 1. IAR's name and logo appear at the top of the invitation,
12 which states "Congressman Mike Simpson and the Idaho Association of REALTORS® invite
13 you to a special visit with Speaker John Boehner." Compl. at 1. The invitation requests a
14 contribution of \$50 per person made payable to "Simpson for Congress" and asks that
15 contributors reply to the Committee at its e-mail address or telephone number as provided. *Id.*,
16 Attach. The invitation also includes a disclaimer stating, among other things, that the Committee
17 paid for the invitation and that corporate contributions are prohibited. *Id.*

18 The Committee's Response did not address, and reports filed with the Commission do not
19 specifically show, how many individuals attended the fundraiser or how much money was raised
20 in response to the invitation, or the complete costs of the fundraiser. Based on the available

¹ Although Congressman Simpson and IAR are both listed as inviting guests to attend the fundraiser, there is no available information indicating that IAR made an in-kind contribution to the Committee by sharing the costs for the event.

1 information, however, it does not appear likely that the fundraiser resulted in a significant net
2 return for the Committee. *See* FEC Form 3, October 15 Quarterly Report of Receipts and
3 Disbursements (October 12, 2013).

4 Complainant alleges that IAR violated 11 C.F.R. § 114.2 by using its logo to facilitate the
5 making of a contribution to the Committee, and the Committee violated 11 C.F.R. § 114.2 by
6 knowingly accepting the contributions. Compl. at 1. To support its allegation, Complainant
7 cites Advisory Opinion 2007-10 (Reyes), where the Commission concluded that a corporation
8 could not allow a federal political committee to use its name and logo on certain invitations to
9 facilitate the making of contributions to that committee. Compl. at 1-2. Therefore, Complainant
10 alleges the use of IAR's name and logo on the invitation to the Committee's fundraiser is
11 prohibited. *Id.*

12 IAR asserts that it lawfully distributed the invitation only to its restricted class in
13 accordance with 11 C.F.R. § 114.2(f)(4)(ii). IAR Resp. at 1. IAR provided a notarized affidavit
14 from its government affairs director who "personally directed" the communication, stating that
15 "[t]he invitation I circulated was sent only to the restricted class of my Association." IAR Resp.,
16 Attach. IAR argues that the distribution to its restricted class does not constitute unlawful
17 corporate facilitation, and that even if it coordinated with the Committee in producing and
18 distributing the invitation, such coordination does not constitute a prohibited corporate in-kind
19 contribution under 11 C.F.R. § 114.2(c). IAR Resp. at 2.

20 The Committee asserts that it lawfully paid for, printed, and distributed the invitation to
21 "tens of thousands of people, associations, and organizations." Committee Resp. at 1. The
22 Committee did not address the legality of its own distribution of the invitation, and instead
23 focused on the scope of IAR's distribution. *See* Committee Resp.; IAR Resp. The Committee

1 acknowledges asking IAR to distribute the invitation but denies any responsibility for IAR's
2 actions by stating "[t]o the extent that the campaign requested other people [to] further circulate
3 the invitation, we assumed that those entities would do so within the boundaries of the law." *Id.*
4 The Committee asserts that Complainant fails to identify what it did wrong, noting that
5 Complainant does not allege that it controlled or directed IAR's actions, or knew that IAR used
6 corporate resources to distribute the invitation. Committee Resp. at 1. The Committee further
7 asserts that IAR assured it that IAR lawfully sent the invitation only to its "restricted class," but
8 that IAR independently distributed the invitation so it has no knowledge of the specifics of IAR's
9 distribution, and did not, or could not, control IAR's actions. *Id.* at 2. Finally, the Committee
10 argues that it did not accept or receive any in-kind contribution that IAR allegedly facilitated by
11 using its corporate resources. *Id.*

12 III. LEGAL ANALYSIS

13 Under the Federal Election Campaign Act of 1971, as amended (the "Act") and
14 Commission regulations, corporations are prohibited from making a contribution to a candidate's
15 committee in connection with a Federal election. 52 U.S.C. § 30118(a) (formerly 2 U.S.C.
16 § 441b(a)). A corporation's name, trade name, trademarks, and service marks are things of value
17 owned by the corporation, so the use of a corporation's name or marks by a committee may
18 constitute an impermissible corporate contribution. *See* Factual & Legal Analysis at 7, MUR
19 6542 (Mullin Plumbing, Inc.); Advisory Op. 2007-10 (Reyes).

20 A corporation is permitted, however, to disburse funds for election-related
21 communications to its restricted class, even if the corporation coordinates with a candidate, a
22 candidate's agent, or a candidate's authorized committee. 52 U.S.C. § 30118(b)(2)(A) (formerly
23 2 U.S.C. § 441b(b)(2)(A)); 11 C.F.R. § 114.2(c); *see* 11 C.F.R. § 114.3(a)(1) (communication to

1 restricted class “may involve election-related coordination with candidates and political
2 committees”). Thus, costs incurred for any communication by a corporation to its restricted class
3 are not expenditures or in-kind contributions. 52 U.S.C. §§ 30101(8)(B)(vi), (9)(B)(v) (formerly
4 2 U.S.C. §§ 431(8)(B)(vi), (9)(B)(v)); 11 C.F.R. §100.134(a); *see* 11 C.F.R. § 100.81 (payment
5 made or obligation incurred by a corporation is not a contribution, if under the provisions of
6 11 CFR part 114 such payment or obligation would not constitute an expenditure by the
7 corporation).² Further, directly soliciting the restricted class for contributions to be sent directly
8 to candidates does not constitute facilitation. 11 C.F.R. § 114.2(f)(4)(ii). For the purpose of
9 soliciting contributions to or coordinating communications with federal candidates under
10 11 C.F.R. § 114.3, the restricted class of an incorporated membership organization, incorporated
11 trade association, incorporated cooperative, or corporation without capital stock is its members
12 and executive or administrative personnel and their families.³ 11 C.F.R. § 114.1(j); *see*
13 11 C.F.R. § 114.8(h) (specifically authorizing trade associations to make communications to its
14 restricted class in connection with federal elections pursuant to 11 C.F.R. § 114.3).

15 The Commission has broad discretion to determine how to proceed with respect to
16 complaints. *See Heckler v. Chaney*, 470 U.S. 821 (1985). “Pursuant to the exercise of its
17 prosecutorial discretion, the Commission will dismiss a matter when the matter does not merit
18 further use of Commission resources, due to factors such as the small amount or significance of
19 the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an
20 investigation, or when the Commission lacks majority support for proceeding with a matter for

² Corporations are no longer prohibited from using their general treasury funds to finance independent communications that expressly advocate for federal candidates. *See Citizens United v. FEC*, 558 U.S. 310, 130 S. Ct. 876 (2010).

³ Executive or administrative personnel means salaried employees who have policymaking, managerial, professional, or supervisory responsibilities. 11 C.F.R. § 114.1(c).

1 the alleged violation, the vagueness or weakness of the evidence, or likely difficulties with an
2 investigation, or when the Commission lacks majority support for proceeding with a matter for
3 other reasons.” Statement of Policy Regarding Commission Action in Matters at the Initial Stage
4 in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007).

5 In this matter, the amounts at issue are difficult to determine but appear likely to be *de*
6 *minimis*. See, e.g., MURs 6287, 6288, 6297 (Liberatore for Congress) (dismissing matter where
7 candidate used his own company’s letterhead with the company’s logo for a letter advocating his
8 election, based on the likely insubstantial value of the letterhead and the apparent *de minimis*
9 benefit provided to the campaign); MUR 6331 (Committee to Elect Shirley Gibson) (dismissing
10 matter with a cautionary letter where committee flyer announcing a fundraiser contained several
11 corporate logos and the event costs, attendance at the event, and the amounts raised were *de*
12 *minimis*); MUR 6322 (Sowers for Congress) (dismissing matter where fundraising event
13 apparently raised only \$5,574 and corporation, whose name and trademark were at issue, offered
14 its product free to the public making it difficult to assess their value); MUR 6110 (Senate Realty
15 Corp.) (dismissing matter with a caution letter where value of corporate name and logo was
16 likely insubstantial and fundraising event had fewer than 200 attendees and raised only \$13,500).
17 Most recently, in MUR 6542 (Mullin Plumbing, Inc.), the Commission dismissed the allegation
18 that respondents violated 52 U.S.C. § 30118(a) (formerly 2 U.S.C. 441b(a)), concluding that the
19 value of the use of the name and logo of an individually owned corporation was likely *de*
20 *minimis* where the amount at issue was unknown, but reminded respondents of the requirements
21 under 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)). It therefore does not appear that
22 further action by the Commission to investigate additional details of this matter is warranted.
23 See *Id.* at 7-8.

1 Accordingly, the Commission exercised its prosecutorial discretion and dismissed the
2 allegations against IAR and the Committee, reminded IAR and the Committee of the
3 requirements under 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)) and 11 C.F.R. § 114.2,
4 and closed the file. *See Heckler v. Cheney*, 470 U.S. 821 (1985).

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